



# Educational Institution and exemption under Income Tax Act 1961

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The exemption of Educational Institution always remains an interesting area. Some charitable activities gets concessions and exemptions under the Income Tax Act 1961 (the “Act”). Education is a charitable activity as per section 2 clause 15. Accordingly, educational activities are exempted from taxation under sections 11, 12 and 13 of the Act.

The exemption to the income of any university or other Educational Institution (hereinafter referred as “Institute) established solely for educational purpose, has been explained in the section 10. Section 11 is a general provision applicable to all charitable institutions, Sec 10(23C) is a specific exemption provision applicable to certain Government and Non-Government

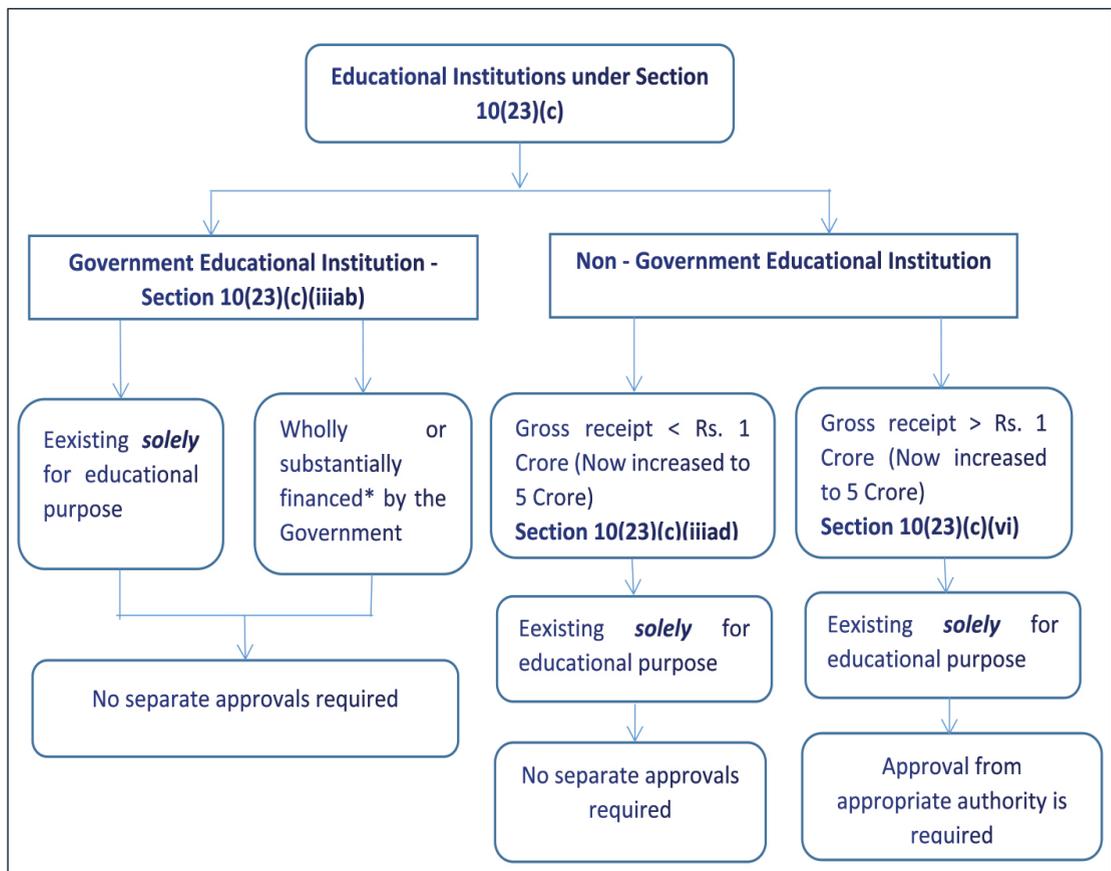
educational institutions.

**As per section 10(23)(c)(vi),**

“In computing the total income.....any income falling within any of the following clauses shall not be included ---

(vi) any university or other educational institution existing solely for educational purposes and not for purposes of profit, other than those mentioned in sub-clause (iiab) or subclause (iiad) and which may be approved by the prescribed authority”

The classification and basic requirements of the Institutes covered under section 10 (23)(c) can be explained as below :



\* When the Government grant to such educational institution, exceeds fifty percent of the total receipts including any voluntary contributions of such educational institution, during the relevant previous year, the institution is said to be substantially financed by the Government as explained by way of Explanation after sub-clause (iii)ac combined with Rule 2BBB.

For claiming exemption under section 10(23)(c), the dominant object should be imparting education.

Controversies arises whether the Chief Commissioner's permission is required to get the exemption under section 10(23C)(vi) for an educational institute with annual receipts of more than 5 crore when education is already considered a charitable activity under section 2 (15).

### ***There are some additional conditions for claiming exemptions under section 10(23)(c)(vi) :***

#### ***i. Accumulation of Income :***

The Institution shall apply at least 85% of the income every year & can accumulate only 15% of the income for the future activities and if there is excess it should be applied for the object within a period of five years. If the accumulation is less than fifteen per cent of the income earned during the year by these educational institutions, there is no limitation on period of accumulation.

#### ***ii. Investments***

The income so accumulated is required to be invested in securities as specified in Section 11(5) only.

#### ***iii. Return of income:***

By virtue of section 139(4C), every educational institution referred to in sub-clause (iii)ab or sub-clause (iii)ad or sub-clause (vi) of Section 10(23C), whose total income in respect of which such institution is assessable, without giving effect to the provisions of section 10, exceeds the maximum amount which is not chargeable to income-tax, furnish a return of such income of the previous year in the prescribed form.

#### ***iv. Audit***

Once the total income without giving effect to sub-clauses of 10(23C) exceeds the maximum amount which is not chargeable to tax in any previous year, the accounts are required to be audited by a qualified Accountant as per Section 288(2) and should furnish such report in Form 10BB along with the return of income for the relevant assessment year.

## Legal Decision :

***'Solely' in Sec 10(23C)(vi) means exclusively; Profit-oriented institutions can't claim exemption : SC***

***Facts of the case: New Noble Education Society vs. CCIT [2022]***

The subject matter of appeal in the instant case was the rejection of the appellant's claim for registration as an institution/trust set up for the charitable purpose of education under the Income-tax Act, 1961. The Andhra Pradesh High Court held that the appellant was not created 'solely' for the purpose of education. It had other objects which means that it ceased to be an institution existing 'solely' for educational purposes.

The appellant relied upon the ruling of American Hotel and Lodging Association v Central Board of Direct Taxes (2008) 10 SCC 509 and Queen's Education Society (2015) 8 SCC 47. It was submitted that the test for determination was whether the 'principal' or 'main' activity was education or not, rather than whether some profits were incidentally earned.

#### ***Supreme Court Held***

The Supreme Court of India held that the interpretation adopted by the judgments in American Hotel as well as Queens Education Society as to the meaning of the expression 'solely' are erroneous.

The decisions in American Hotel and Queens Education Society did not explore the true meaning of the expression 'solely' in the context of educational institutions. The word "Solely" in section 10(23C)(vi) means only/exclusively and not primarily.

The requirement of the charitable institution, society or trust, etc., to 'solely' engage itself in education or educational activities, and not engage in any activity of profit, means that such institutions cannot have objects which are unrelated to education. In other words, all objects of society, trust, etc., must relate to imparting education or be with educational activities.

Where the objective of the institution appears to be profit-oriented, such institutions would not be entitled to approval under Section 10(23C). At the same time, where surplus accrues in a given year or set of years per se, it is not a bar, provided such surplus is generated in the course of providing education or educational activities.



The seventh proviso to Section 10(23C), as well as Section 11(4A), refers to profits that may be 'incidentally' generated or earned by the charitable institution. The same applies only to those institutions which impart education or are engaged in activities connected to education.

The reference to 'business' and 'profits' in the seventh proviso to Section 10(23C) and Section 11(4A) merely means that the profits of a business which is 'incidental' to the educational activity. In relation to education, it is the sale of textbooks, providing school bus facilities, hostel facilities, etc.

Thus, a trust, university or other institution imparting education, should necessarily have all its objects aimed at imparting or facilitating education. Having regard to the plain and unambiguous terms of the statute and the substantive provisions which deal with exemption, there cannot be any other interpretation.

Further, Since the Hon'ble Supreme Court departed from the previous rulings regarding the meaning of the term 'solely', in order to avoid disruption, and to give time to institutions likely to be affected to make appropriate changes and adjustments, their Lordships directed that the law declared in this judgment shall operate prospectively.

### ***Whether exemption of income of an Educational Society, which is not notified under section 10(23C) (vi) of the Income Tax Act, 1961 is allowed under section 11***

#### ***Facts of the case : Asstt. CIT v Mahasabha Gurukul Vidyapeeth***

The assessee is running an educational institution and claimed exemption under Section 11 of the Act in respect of its income. The Assessing Officer did not accept this plea on the ground that the assessee failed to file notification under Section 10(23C) (vi). The CIT(A) upheld the stand of the assessee. It was observed that absence of registration under Section 10(23C) (vi) was no bar to exemption under Section 11. This view has been affirmed by the Tribunal relying upon the judgment of the Hon'ble I.T.A. No. 519 of 2007 (2) Supreme Court in CIT Vs. Bar Council of Maharashtra (1981) 130 ITR as follows :

“Once it is held that all requisite conditions for exemption under Section 11 have been met, even if conditions under Section 10 (23C) (vi) have not been complied with, there will be no bar to seek exemption under Section 11.

The judgment relied upon has no application to the present case as therein the question was as to the scope of enquiry under Section 10 (23C) (vi) read with 3rd proviso thereto. The view taken in Bar Council of Maharashtra (supra) is not shown to have been affected. The CIT (A) as well as the Tribunal have categorically held that all conditions of Section 11 were fulfilled and judgment in Bar Council of Maharashtra was applicable. We are, thus, unable to hold that any substantial question of law arises.”

#### ***Some relevant judgments :***

In *Mittal Engg. Works v CCE*, SC ruled that a decision cannot be relied upon to support a proposition that it did not decide.

In the case of *Bengal Immunity Co Ltd v State of Bihar*, the court stated that it is a cardinal rule of construction that when there are in a statute two provisions which are in conflict with each other so that both of them cannot stand, they should, if possible, be so interpreted that, effect can be given to both, and that, a construction which renders either of them inoperative and useless should not be adopted, except in the last resort.

At the same time, it also can be said that, Sections 11, 12 and 13 are general provisions dealing with other charitable activities along with education whereas section 10(23C) (vi) is a special provision dealing specifically with the charitable activity of 'education'. So, the mandatory conditions given in the section 10(23C)(vi) can not be avoided completely.

#### ***49th GST Council meeting***

In the 49th GST Council meeting, the Council decided to extend the exemption given to educational institutions and Central/state educational boards to any authority, board or bodies set up by the Central/state governments, for conducting entrance examinations. This also includes the National Testing Agency that conducts entrance exams for admission to educational institutions.

From the above it can be seen that educational institutions has been given multiple relieves in relation with complete to partial exemption from the income generalised solely form education under Income Tax Act 1961. Such relaxations have significantly contributed in development of education sector in the country resultantly helping in upliftment of the society at large.